

California Regional Water Quality Control Board
North Coast Region

Resolution No. R1-2007-0034

A Collaborative Effort to Develop
Ownership-Wide Waste Discharge Requirements
for Timber Harvesting Activities
Conducted by the Mendocino Redwoods Company
on Their Lands in

Mendocino and Sonoma Counties

FINDINGS

WHEREAS, the California Water Quality Control Board, North Coast Region, (Regional Water Board) finds that:

1. The Regional Water Board has primary responsibility for administering and enforcing the Porter-Cologne Water Quality Control Act ("Porter-Cologne Act") in conjunction with the federal Clean Water Act ("Clean Water Act") in the North Coast Region. The Porter-Cologne Act is the enacting legislation for the Regional Water Board's programs to regulate the discharge of waste into waters of the State, and to protect, enhance, and restore the waters of the State.
2. MRC was formed in 1998 with the goal of demonstrating that it is possible to manage productive forestlands with a high standard of environmental stewardship and also operate a successful commercial forestry business. MRC owns approximately 350 square miles (228,835 acres) of forestland spanning more than 75 northern California coastal watersheds and including 1500 miles of year-round streams. Most of MRC's lands are in the North Coast Region.

Habitat Conservation Planning and the Timber Harvest Permitting Process

3. A Habitat Conservation Plan ("HCP") is a type of agreement with wildlife agencies that is designed to comply with the federal Endangered Species Act to incorporate wildlife protection and mitigation measures into activities that could result in the incidental take of threatened or endangered species. A Natural Community Conservation Plan ("NCCP") is similar to a HCP and is a state plan used to comply with the Natural Community Conservation Planning Act and the California Endangered Species Act. MRC is preparing a joint HCP/NCCP in collaboration with the California Department of Fish and Game ("DFG"), the United States Fish and Wildlife Service ("USFWS"), the National Marine Fisheries Service ("NMFS") and other State and federal agencies. The USFWS, the NMFS, and the DFG are referred to collectively herein as the "Wildlife Agencies" and each individually as a "Wildlife Agency."
4. MRC is preparing a Timber Management Plan ("TMP") for review and approval by the California Department of Forestry and Fire Protection ("CDF"). The TMP will

describe how MRC will manage its lands and operations to achieve the maximum sustained production of high quality timber products within the plan area, balancing growth and harvest over time, and taking into account biological and economic factors.

5. Timber harvest by MRC in accordance with the TMP will be among the covered activities identified in the HCP/NCCP. The HCP/NCCP thus will apply to MRC's commercial timber operations and will result in the incorporation of conservation measures into those operations to protect threatened and endangered species. The HCP/NCCP will include a comprehensive long-term conservation strategy for fish, wildlife and natural communities covering all of MRC's ownership. Among other conservation measures, the HCP/NCCP will include water quality protection measures for the benefit of coho salmon and steelhead. Other beneficial uses of water identified in the North Coast Water Quality Control Plan (Basin Plan) are not specifically targeted by the HCP/NCCP but will likely benefit from the water quality protection measures developed for coho salmon and steelhead.
6. MRC also will develop a Programmatic Timber Harvest Plan Environmental Impact Report ("PTEIR") that analyzes environmental impacts of timber harvesting operations and proposes measures to mitigate significant impacts to insignificant levels. In addition, for each sub-area within the TMP plan area, MRC will prepare a Programmatic Timber Harvest Plan ("PTHP") for the multi-agency team review that comprises the CDF approval process. Each PTHP will include mitigation, conservation, and monitoring measures consistent with the HCP/NCCP. The series of PTHPs that MRC prepares within the TMP area will implement, on a site-specific level, the programmatic measures described in the TMP and HCP/NCCP.
7. Implementation of the HCP/NCCP will be governed by an Implementation Agreement between MRC, the USFWS, NMFS, CDF, and DFG ("Parties") that will be executed at the time the TMP and HCP/NCCP are approved. This is likely to happen in 2008. The Implementation Agreement is intended to specify, in language similar to a contract, the obligations of the Parties under the TMP and HCP/NCCP, recognizing that they are planning documents and are not drafted as contracts. The Regional Water Board will not be a party to the Implementation Agreement. Rather, the collaborative approach described in this Resolution will inform development and implementation of the HCP/NCCP and Ownership-wide Waste Discharge Requirements ("OWDRs"), and will define MRC's and the Regional Water Board's roles and responsibilities for purposes of complying with the Porter-Cologne Act and Clean Water Act.

Regional Water Board Regulatory Programs

8. The Porter-Cologne Act is the principal law governing water quality control in California. It establishes a comprehensive program to protect water quality and the beneficial uses of waters of the State. The Porter-Cologne Act applies broadly to all waters of the state, including surface waters, wetlands, and ground water. All dischargers of waste into waters of the state are subject to regulation under the Act.
9. Commercial forestry can adversely impact water quality. On the North Coast, timber operations can result in sedimentation of coastal waterways and can reduce vegetative cover from coastal streams, which may increase water temperatures. The Regional Water Board participates in the multi-agency review of timber harvest plans ("THPs") prepared by timber operators to meet the requirements of the Z'berg-Nejedly Forest Practice Act ("Forest Practice Act") and the California Forest Practice Rules ("Forest Practice Rules").
10. This regulatory regime has some disadvantages for water quality protection. It relies on THPs for implementation, which are focused and often limited to a few hundred acres or less, and which do not provide an effective means to implement broad, long-term water quality control strategies. For commercial timber operators like MRC, THP-by-THP regulation of water quality is unpredictable and inefficient.
11. The Regional Water Board regulates timber operations either through a general waiver of waste discharge requirements pursuant to Order No. R1-2004-0016 (Categorical Waiver of Waste Discharge Requirements For Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, or Waiver), a general waste discharge requirements order pursuant to Order No. R1-2004-0030, (General Waste Discharge Requirements for Discharges Related to Timber Harvest Activities, or GWDRs), or an individual waste discharge requirements order (WDR). Timber operators must either receive a Waiver or enroll CDF-approved THPs under the GWDRs or individual WDRs.
12. WDRs may include effluent limitations or other requirements that are designed to implement applicable water quality control plans, which include designated beneficial uses and the water quality objectives established to protect those uses and prevent the creation of nuisance conditions. A WDR may also specify certain conditions under which, or areas where, the discharge of waste or certain types of waste will not be permitted.

13. The Regional Water Board has adopted a policy to implement sediment TMDLs¹ throughout the North Coast Region: the *Total Maximum Daily Load Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region* (the "TMDL Policy"). The goals of the TMDL Policy are to control sediment waste discharges to impaired water bodies so that TMDL targets are met, sediment water quality objectives are attained, and beneficial uses of water are no longer adversely affected by sediment.
14. To implement the TMDL Policy, the Regional Water Board proposes to adopt an amendment ("Regional Sediment Amendment") to the Basin Plan that consists of "Sediment Waste Discharge Prohibitions" and related "Implementing Guidelines." The Regional Sediment Amendment will include water quality control measures that apply to commercial timber harvesting activities among other things.

Ownership-wide Waste Discharge Requirements

15. The Regional Water Board and MRC believe there is a superior way to integrate water quality control measures into MRC's timber operations. The Regional Water Board and MRC wish to develop Ownershipwide WDRs (OWDRs) that include by reference the water quality control measures contained in the HCP/NCCP. The intent is that the OWDRs will: 1) incorporate the HCP/NCCP water quality measures; 2) protect the beneficial uses of waters on MRC's land that could be affected by MRC's activities; and 3) comply with the Porter-Cologne Act, the Basin Plan, and the Clean Water Act. The Regional Water Board and MRC wish to minimize the complexity and regulatory burden of implementing the OWDRs to the maximum extent possible, while ensuring their effectiveness in protecting water quality. To that end, the Regional Water Board and MRC wish to develop a comprehensive, integrated program that builds upon the HCP/NCCP water quality measures and that will comply with the Porter-Cologne Act and the Clean Water Act.
16. The Regional Water Board's regulatory tools allow it to address regional water quality impacts more efficiently than is possible using only site-specific water quality control plans or measures. MRC and the Regional Water Board believe that MRC's HCP/NCCP can provide the basis for OWDRs that will provide protection and improvement to water quality and minimize unnecessary regulatory constraints on MRC's commercial timber operations. The OWDRs also would cover requirements of other Regional Water Board programs within MRC's

¹ TMDLs, or Total Maximum Daily Loads, are standards required by the Clean Water Act, which the Regional Water Board is chiefly responsible for developing and implementing. TMDLs define the maximum amount of a pollutant, such as sediment, that a body of water can handle and still remain in compliance with water quality objectives and avoid harming the waterbody's beneficial uses as well as targets for sediment reduction and targets for in-stream conditions that characterize attainment of beneficial uses.

ownership, such as the Garcia River TMDL Implementation Plan and TMDL implementation in other North Coast watersheds.

In this way, the OWDRs would maximize the integration of the HCP/NCCP with water quality regulations to address the full suite of regulatory requirements associated with timber harvesting activities.

17. The purpose of this resolution is to set forth MRC's and the Regional Water Board's shared understanding of the intent and key elements of their collaboration to develop an ownership-wide approach to compliance with the Porter-Cologne Act, the Basin Plan, and the Clean Water Act based on the requirements and framework established by the HCP/NCCP. This Resolution shall not be construed to limit the authority of the Regional Water Board nor entitle either Party to remedies for breach of contract for failure to adhere to the Resolution.
18. Adoption of this resolution is not subject to the requirements of CEQA. The Regional Water Board is not giving its discretionary approval of any project, which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Adoption of this resolution does not, in any way, commit the Regional Water Board to a definite course of action. Any future action that requires the Regional Water Board's discretionary approval of a project which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change, including adoption of OWDRs, will be contingent on CEQA review.

NOW, THEREFORE, BE IT RESOLVED THAT, after considering the entire record,

1. The Regional Water Board and MRC will continue to collaborate in the development of elements of the HCP/NCCP that address water quality protection and enhancement. The Regional Water Board's substantive and consistent participation in the development of the HCP/NCCP is an essential element of the collaboration. The Regional Water Board will continue its participation, and MRC will continue to ensure that the Regional Water Board is included in the review of relevant draft documents and in relevant meetings.
2. The goals of the collaboration are to:
 - a. incorporate the Porter-Cologne Act, the Basin Plan, and Clean Water Act requirements into the HCP/NCCP to the greatest extent practicable;
 - b. ensure that measures developed to meet the requirements of the ESA and the NCCPA are consistent with, and are complemented by, any measures required by the Porter-Cologne Act, the Basin Plan, and the Clean Water Act; and
 - c. ensure that any guidance from the wildlife agencies on implementing the HCP/NCCP that may conflict with guidance from the Regional Water Board regarding water quality laws, regulations, or policy, is identified, and resolved in the HCP/NCCP to the maximum extent possible.

3. The HCP/NCCP will provide a strong framework for the implementation of measures to address water quality protection and enhancement, because the HCP/NCCP will guide virtually all, if not all, aspects of MRC's timber operations that could affect water quality or result in other environmental impacts. In fact, measures in the HCP/NCCP designed to protect coho salmon and steelhead will in large part be water quality control measures, and the HCP/NCCP will therefore necessarily include a water quality control regime, whether or not it is specifically regarded as such.
4. Integrating the Porter-Cologne Act, the Basin Plan and Clean Water Act requirements into the HCP/NCCP therefore consists of identifying clarifications, refinements or additions to the requirements of the HCP/NCCP that are necessary for compliance with those laws, and addressing those areas to the maximum extent possible within the HCP/NCCP. Measures that are necessary for compliance with the Porter-Cologne Act, the Basin Plan and the Clean Water Act that are not included in the HCP/NCCP will be included in the OWDRs.
5. The Regional Water Board and MRC expect to avoid redundancy and ensure a maximum level of consistency between the HCP/NCCP and Porter-Cologne Act/Clean Water Act requirements, make efficient use of the resources of the Regional Water Board and MRC, ensure coordination among the state and federal agencies that regulate MRC's commercial timber operations, ensure that MRC's operations comply with applicable state and federal requirements in a comprehensive and systematic way, and ensure that MRC is able to carry out its operations in a systematic, predictable and economically viable way.
6. Consequently, it is the Regional Water Board's and MRC's intent to achieve compliance with the Porter-Cologne/Clean Water Acts as much as possible through the implementation of the conservation strategies and measures, adaptive management, monitoring, and agency consultation processes contained in the HCP/NCCP.
7. The HCP/NCCP will include an adaptive management strategy that uses analysis of watershed conditions to modify protections as more information becomes available and as MRC builds a record of HCP/NCCP implementation. MRC and the Regional Water Board will collaborate to ensure that the HCP/NCCP adaptive management strategy is consistent with State Water Board Resolution No. 68-16, "*Statement of Policy With Respect to Maintaining High Quality of Waters in California*" (State Anti-degradation Policy.).
8. The OWDRs will describe the process details of PTHPs, Erosion Control Plans, TMDL sediment reduction plans, monitoring, and adaptive management with enough specificity to require MRC to meet water quality requirements, yet retain flexibility for the future. Planning followed by good communication and

collaboration is key to changes and addressing unforeseen situations as they arise. MRC and the Regional Water Board staff shall strive to complete OWDRs and deliver to the Regional Water Board for consideration for adoption within eight months of the signing of the HCP/NCCP Implementation Agreement.

9. Upon adoption of the OWDRs, MRC and the Regional Water Board staff shall meet on a quarterly basis, or more frequently as situations may demand, to review the implementation of the OWDRs and propose necessary adjustments to the process.

CERTIFICATION

I, Catherine Kuhlman, Executive Officer,
do hereby certify that the foregoing is a
full, true, and correct copy of a
Resolution adopted by the California
Regional Water Quality Control Board,
North Coast Region, on June 14, 2007.

Catherine Kuhlman
Executive Officer